

ORIGINAL

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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:
RICHARD JEWELL, et al., :
:
Plaintiffs, : Civil Action No.
:
v. : 97-408
:
ALBERTO GONZALEZ, et al., :
:
Defendants. :
:
- - - - -x

Washington, D.C.

Wednesday, April 6, 2005

The 30(b)6 deposition of JOHN M. VANYUR called for examination by counsel for the Plaintiffs in the above-entitled matter, pursuant to notice, at the offices of United States Department of Justice, 20 Massachusetts Avenue, N.W., Room 7400, Washington, D.C., convened, pursuant to notice, at 10:01 a.m., before Catherine B. Crump, a notary public in and for the District of Columbia, when were present on behalf of the parties:

APPEARANCES:

On behalf of the Plaintiffs:

JERE KRAKOFF, ESQ.
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(412) 232-0276

On behalf of the Defendants:

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United States Department of Justice
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C O N T E N T S

	EXAMINATION BY COUNSEL FOR
WITNESS	PLAINTIFFS DEFENDANTS

John M. Vanyur	7	130
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E X H I B I T S

PLAINTIFF'S EXHIBIT MARKED FOR IDENTIFICATION

No. 1	11
No. 2	(Previously)
No. 3	31
No. 4	32
No. 5	42
No. 6	83
No. 7	117
No. 8	120
Nos. 9 through 10	(Previously)
No. 11	33
Nos. 12 through 18	(Previously)
No. 19	70
No. 20	99
No. 21	100

1 P R O C E E D I N G S

2 Whereupon,

3 JOHN M. VANYUR

4 was called to testify and, having first been duly
5 sworn by the notary public, was examined and
6 testified as follows:

7 Q A few preliminaries before I start to
8 question you: I learned on Monday that we had sent
9 the notice of the 30(b)6 deposition to the former
10 address of Ms. Edney and it had only arrived, I think
11 either that day or shortly before that day, and for
12 that reason, I understand that--and it certainly
13 wasn't deliberate on our part. I understand that
14 it's possible that you may not be prepared to address
15 each of the issues that are listed in the notice, and
16 as I told Ms. Edney when we spoke on Monday, that if
17 that happens, I'll certainly understand and we'll
18 reconvene either at a later time to examine you about
19 those questions or to examine some other person who
20 is designated to testify with respect to those
21 issues. And I apologize again for the mistake.

22 I don't know whether you've been deposed

1 before, but I'll give you just a few very brief
2 suggestions. I guess the most important thing is for
3 you to wait until I finish my question before you
4 begin to answer. In common parlance, we're
5 accustomed to if we know what the question is before
6 it's completed, often we begin to answer, but that's
7 very difficult for the court reporter and it's not
8 good for record. So wait until you think I have
9 completed my question, and I'm going to the same or
10 at least I'll endeavor to do the same so we're not
11 speaking over each other.

12 The other thing is if I put a question to
13 you where you can respond with a yes or a no, try to
14 refrain from saying uh-huh or huh-uh or just nodding
15 your head because that really creates the possibility
16 that the response that's taken down won't be
17 accurate, won't be meaningful. So try to remember to
18 say either yes or no, and if there is a question that
19 I put to you that you can't answer with a yes or a
20 no, then answer it as you choose to, or if you can
21 answer with a yes or no but feel you want to add
22 something to it, you're free to do that as well. If

1 you want to take a break at any point in the
2 deposition, just let me know or let your counsel know
3 and she'll let me know and we'll break.

4 This lawsuit, as you're probably aware of
5 involves the issue of the Zimmer Amendment and its
6 implications on the showing of our R-rated movies to
7 inmates at FCI McKean. It doesn't involve the
8 showing of NC-17 movies or X-rated movies, so that
9 many of the questions I put to you are going to be
10 related to policies that date back to at least 1986
11 with respect to the showing of R-rated movies and any
12 changes that came about as a result of the Zimmer
13 Amendment. You're not a party to this. The suit
14 seeking declaratory and injunctive relief--no money
15 damages are a being sought--is pending in the Western
16 District of Pennsylvania and only relates to the
17 class of inmates, directly relates to the class of
18 inmates, who are confined at F.C.I. McKean.

19 So with that said, I'll begin to question
20 you.

21 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

22 BY MR. KRAKOFF:

1 Q Would you state your full name, please?

2 A My name is John Martin Vanyur.

3 Q Would you spell your last name?

4 A Sure. V-A-N-Y-U-R.

5 Q Are you employed by the Federal Bureau of
6 Prisons?

7 A I am.

8 Q What is your position with the Bureau?

9 A I'm the Assistant Director of the
10 Correctional Programs Division.

11 Q How long have you held that position?

12 A Since June of 2004.

13 Q What are your basic functions and
14 responsibilities in that position?

15 A I have policy oversight for the majority
16 of prison operations throughout the Bureau, including
17 intelligence, emergency planning, security, mental
18 health delivery, inmate transportation, community
19 corrections, privatization, private correctional
20 management, and religious services.

21 Q Does any of your work involve
22 recreational programs in prisons?

1 A I don't have direct oversight of
2 recreation.

3 Q Who has direct oversight over that area?

4 A The Assistant Director of Industries,
5 Education, and Vocational Training?

6 Q who is that person?

7 A That's Steve Schwalb.

8 Q Were you employed by the Federal Bureau
9 of Prisons prior to the time you assumed your
10 position in June of 2000?

11 A I was.

12 Q In what capacity?

13 A Prior to that, I was the Deputy Assistant
14 Director of Correctional Programs Division, and then
15 prior that, I was the warden at the Federal Detention
16 Center in Philadelphia, Pennsylvania.

17 Q How long did you hold your position as
18 the Deputy Assistant Director?

19 A Three and a half years.

20 Q Do you recall the year that you began in
21 that position?

22 A January 2001.

1 Q Did you have any involvement in that
2 position with respect to inmate recreational
3 programs?

4 A No.

5 Q Okay. And who at the time you became the
6 Deputy Assistant Director was responsible for
7 overseeing recreational programs?

8 A Steve Schwalb.

9 Q Do you know approximately how long Mr.
10 Schwalb has held that position in industries?

11 A I'm not sure. Probably since, you know,
12 mid-nineties, '96, '97 possibly.

13 Q Are you familiar, generally familiar,
14 with the Zimmer Amendment?

15 A I am.

16 Q Was Mr. Schwalb in charge of overseeing
17 recreational programs prior to Zimmer or did he come
18 in after, if you recall?

19 A I don't know. The timing is close.

20 Q Do you recall who held Mr. Schwalb's
21 position prior to the time Mr. Schwalb assumed his
22 position?

1 A Rick Seiter, I believe was just prior to
2 him.

3 Q Can you spell his last name, please

4 A S-E-I-T-E-R. He's retired from the
5 Bureau.

6 Q Do you know where he is located, in what
7 state?

8 A Rick Seiter.

9 Q Yes.

10 A He is an employee of Corrections
11 Corporation of America in Nashville, Tennessee.

12 Q Did he hold that position for a number of
13 years?

14 A Yes.

15 Q By that position, I don't mean with--

16 A No. The Assistant Director of IEVT, is
17 the acronym.

18 Q Who is the Director of the Federal Bureau
19 of Prisons now?

20 A Harley G. Lappin.

21 Q Would you spell his name?

22 A L-A-P-P-I-N.

1 Q Do you know when Mr. Lappin became
2 director?

3 A It would have been--

4 Q You can give me the year.

5 A Yeah. 2003.

6 Q Was Ms. Hawks his immediate predecessor?

7 A Correct.

8 Q Is Ms. Hawks no longer employed by the
9 Bureau?

10 A That's correct. She retired.

11 Q Do you know her whereabouts, either
12 employment-wise or residential-wise?

13 A She lives in Virginia.

14 Q In the Arlington or Alexandria--

15 A I'm not sure.

16 Q Okay. Is it in Northern Virginia?

17 A Yes.

18 [Plaintiff's Exhibit No. 1 was.
19 identified for the record.]

20 BY MR. KRAKOFF:

21 Q You have a pile of exhibits that I gave
22 to you just a few moments ago. I'd like you to look

1 at Plaintiff's Exhibit 1, which is a three-page
2 document, not including the certificate of service,
3 titled "Notice of Deposition". Have you seen this
4 document prior to now?

5 A Yes, briefly.

6 Q When did you see the document for the
7 first time?

8 A Yesterday.

9 Q Did you read the entire text of the
10 document?

11 A Yes.

12 Q Okay.

13 A Quickly.

14 Q And are you appearing today as the Rule
15 30(b)6 designee on behalf of the Federal Bureau of
16 Prisons? And by 30(b)6, I'll translate that into
17 laypersons terms.

18 A Thank you.

19 Q 30(b)6 essentially with respect to a
20 government party allows for a notice to be sent to
21 the governmental entity asking the entity to
22 designate a person or persons to testify on behalf of

1 the governmental entity, and my question is whether
2 you've been designated by the Bureau of Prisons to
3 testify at this deposition on behalf of the Bureau.

4 A Yes.

5 Q Okay. And what I'd like you to do so
6 that I'll know what the parameters are, I'd like you
7 to read to yourself through each of the 11 items, and
8 I'm going to ask you after you read whether there are
9 any items that you are not prepared today to testify
10 about so that I'll try my best not to ask you about
11 those matters .

12 [Witness peruses exhibit.]

13 THE WITNESS: There would be two
14 questions that would be difficult for me to answer.

15 BY MR. KRAKOFF:

16 Q Could you just by number tell me which
17 those are?

18 A No. 8.

19 Q Okay.

20 A I'm not sure what an exaggerated response
21 is. I don't know if that's a legal term or not, but
22 it doesn't have meaning to me.

1 Q All right.

2 A And No. 11, I would be able to discuss
3 the questions in the context of the Bureau of
4 Prisons, but in terms of my knowledge of what's
5 specifically going on at FCI McKean, I wouldn't have
6 knowledge of that.

7 Q Understood. Given the fact that Mr.
8 Schwalb had direct oversight on the matter, over
9 matters involving inmate recreation. I assume
10 including but not limited to showing movies to
11 inmates, do you know why--and I'm not asking you to
12 divulge anything that either of your attorneys might
13 have told you with respect to--if it was their
14 decision, I'm not asking you to go into that, but do
15 you know why independent of divulging any
16 confidential information Mr. Schwalb is not
17 testifying about the movie issue and why you are?

18 A I would be--my expertise in day-to-day
19 prison operations would stronger than his.
20 Recreation is small part of their mission. I have
21 all the security and the day-to-day operations. I'm
22 basically the chief operating officer for the agency.

1 I also have more extensive experience actually
2 running prisons than Mr. Schwalb.

3 Q What year did you begin to work--I
4 believe you said you were the warden in Philadelphia.

5 A Yes, and in Butner, North Carolina.

6 Q North Carolina preceded Philadelphia?

7 A Correct.

8 Q What year did you begin to work in
9 Philadelphia as the warden?

10 A In 1978.

11 Q Okay. And prior to 1998, where were you?

12 A I was the warden in Butner, North
13 Carolina from '96.

14 Q Can you spell Butner?

15 A B-U-T-N-E-R.

16 Q So you were warden in North Carolina FOR
17 approximately two years?

18 A A little over, closer to three.

19 Q And you were the warden at the
20 Philadelphia BOP facility for approximately?

21 A Just under three.

22 Q Where you were before coming to Butner?

1 A I was the associate warden at the
2 administrative maximum penitentiary in Florence,
3 Colorado.

4 Q Was that a federal facility?

5 A That's correct.

6 Q During what period of time were you
7 associate warden?

8 A '94 to '96.

9 Q Did you work in any capacity for the
10 Bureau prior to 1994?

11 A I did. I've worked for the Bureau since
12 1979.

13 Q What was your first position with the
14 Bureau?

15 A I was a research analyst.

16 Q Was that in the area of security or was
17 it in--

18 A No. Inmate programming and staff issues.

19 Q Okay.

20 A I'm a psychologist by training.

21 Q Should I be referring to you as doctor?

22 A You don't need to, but I do have a Ph.D.

1 in psychology.

2 Q Did any of your role as a research
3 analyst involve the showing of movies to prisoners?

4 A It did not.

5 Q And then after--how long did you hold
6 that position?

7 A Until 1982.

8 Q Where did you go from there?

9 A I went over to the Human Resource
10 Management Division of the Bureau of Prisons where I
11 was the chief of personnel program analysis.

12 Q Just briefly, what did that involve?

13 A I designed how the agency selected and
14 trained and evaluated employees.

15 Q How long did you hold that position?

16 A Until 1986.

17 Q Where did you go in '86?

18 A I went to the Federal Correctional
19 Institution in Terminal Island, California where I
20 was the executive assistant to the warden.

21 Q Did they show movies at that facility?

22 A They did.

1 Q Were R-rated movies shown?

2 A I believe on occasion, they were.

3 Q Were unedited R-rated movies shown at
4 that time? By unedited, I'll define that to mean the
5 original version without editing out graphic
6 violence, sex, or language.

7 A I don't recall.

8 Q But in any event, R-rated movies at that
9 time as best you can recall at that facility were not
10 categorically banned?

11 A That's correct.

12 Q Was it left to the discretion of the
13 warden of the facility or some other person at the
14 facility to determine whether a particular R-rated
15 movie should not be shown?

16 A Back then, I think we had a committee of
17 staff that would view the movies and make
18 recommendations to the warden who would make the
19 final decision.

20 Q Did you ever participate in that?

21 A I did not.

22 Q Do you know what standards governed their

1 selection and determination?

2 A The broad standard would be the safe and
3 orderly running of the institution.

4 Q How long were you at Terminal Island?

5 A Two years.

6 Q We probably covered that, but where did
7 you go in '88?

8 A In '88, I worked for the Director of the
9 Bureau of Prisons. I was the head of management
10 development.

11 Q Was that in Washington, D.C?

12 A Correct.

13 Q Was that your first assignment in D.C.?

14 A No. When I was a research analyst, I was
15 in D.C.

16 Q Okay. How long did you hold that
17 position?

18 A I held that position for two years, and
19 then I became the Deputy Assistant Director of Human
20 Resource Management.

21 Q How long did you hold that position?

22 A Until I went to Colorado. You've closed

1 the loop now.

2 Q I asked you about what your basic
3 functions and responsibilities are in your current
4 position. Do you know what the basic functions and
5 responsibilities of the Director of the Bureau of
6 Prisons are?

7 A Yes.

8 Q And what are they?

9 A They would be the oversight of 35,000
10 employees in 110 prisons nationwide and a \$5 billion
11 budget and making sure that inmates are safe and
12 secure and programming for reintegration back in
13 society.

14 Q And would it be accurate to say that the
15 Director of the Federal Bureau of Prisons is the
16 Chief Executive Officer of the Bureau?

17 A Yes.

18 Q Okay. And immediately below the
19 Director, what is that position called?

20 A There are eight Assistant Directors and
21 six Regional Directors.

22 Q Is the assistant above the regional?

1 A They're peers.

2 Q Okay. And under the regional, would the
3 warden be the next person?

4 A That's correct.

5 Q Did you know Dennis Luther, the former
6 warden at FCI McKean?

7 A I did.

8 Q How did you come to know him?

9 A I knew all the wardens. In the positions
10 I was in, I had contact with virtually every warden
11 on a fairly recent basis or common basis, and I also
12 from 1988 on attended every national warden's
13 conference.

14 Q Okay. And your office is located where?

15 A 320 First Street, Northwest.

16 Q You described the basic responsibilities
17 of the director, and I probably asked you that in the
18 present sense. Would those have been the basic
19 responsibilities of the Director going back to '86?

20 A Yes. Just an issue of scale.

21 Q Who appoints the Director of the Federal
22 Bureau of Prisons?

1 A The Attorney General.

2 Q And is the Bureau of Prisons--is that
3 part of the Justice Department?

4 A Yes.

5 Q Who would be immediately above the
6 Director of the Bureau of Prisons in the
7 administrative hierarchy?

8 A The way the current org chart is, it
9 would be the Deputy Attorney General.

10 Q Do you know whether it was like that
11 during any portion of the time Ms. Hawks was the
12 Director?

13 A There was--at one point, there was an
14 Associate Attorney General, No. 3 person, which there
15 is again, and I don't know. At one point, we were in
16 that line, and then we moved over to the Deputy
17 Attorney General.

18 Q So it would have been either the second
19 in command in the Attorney General's Office or the
20 third?

21 A Or the third, correct.

22 Q What, if anything, have you done to

1 prepare for this deposition? And I want you to
2 understand when I ask you this, I don't want you to
3 tell me the substance of any conversations that you
4 had with either an attorney, Ms. Edney or some other
5 attorney, or agent of hers within the Department
6 of--the Justice Department or with counsel who is
7 here today from the BOP or any other BOP counsel.
8 Have you done anything to prepare for this
9 deposition?

10 A Yes.

11 Q What have you done?

12 A Met with counsel and read a number of
13 documents.

14 Q If you can leaf through--and I'm not
15 asking you to read line by line or paragraph by
16 paragraph or page by page, but if you could just
17 identify which--I believe there are 21 exhibits that
18 you have in front of you. If you can just tell me
19 which of those exhibits you reviewed prior to this
20 deposition.

21 MS. EDNEY: Objection. That's
22 privileged. What documents I had him look at would

1 be privileged, I believe. He looked at documents,
2 and you're entitled to know that, but I don't think
3 you're entitled to know exactly which documents I
4 thought were appropriate for him to have.

5 MR. KRAKOFF: So are you instructing him
6 not to answer?

7 MS. EDNEY: I would instruct him not to
8 tell you.

9 BY MR. KRAKOFF:

10 Q Did you do anything other than confer
11 with counsel and review--were those Bureau of Prisons
12 documents that you reviewed? Were they my documents,
13 the Notice--I think you did say you looked at the
14 Notice of Deposition. Most of the documents, were
15 they Bureau of Prisons documents?

16 A No.

17 Q Okay. Why don't you tell me what kind of
18 documents, generically speaking, you reviewed so that
19 I'll know what you did to prepare for this? Did you
20 review--what did you review?

21 I think I can him generically. I'm
22 trying to determine how familiar he is with the

1 subject matter.

2 MS. EDNEY: I mean, I think you can get
3 to that by asking him questions and determining
4 whether or not he can answer your question. I don't
5 know the real specifics. He's been able to answer
6 all your questions today. I realize they're
7 preliminary, and I think he's looked through the depo
8 notice and said that he could probably respond to
9 most of your questions. So I think if we go through
10 the questions you actually have, you'll get a better
11 sense.

12 MR. KRAKOFF: We'll try that.

13 MS. EDNEY: Okay.

14 BY MR. KRAKOFF:

15 Q Did you have any discussions with anybody
16 other than counsel in order to prepare for this
17 deposition?

18 A Yes.

19 Q Who did you speak with?

20 A I spoke with the chief psychologist of
21 the Bureau.

22 Q Okay. Who is that?

1 A That's Dr. John Baxter.

2 Q Can you spell the last name?

3 A B-A-X-T-E-R.

4 Q And why did you speak with him?

5 A We were talking about an issue that will
6 probably come up later on criminogenic risk factors,
7 and we just had an academic discussion, if you will.

8 Q What does that mean?

9 A There is a lot of literature over the
10 last decade that people involved in criminal behavior
11 are at risk with their attitudes, with their
12 decision-making, with flaws in their value systems,
13 and those risk factors contribute to probability that
14 they'll be involved in criminal behavior, and so when
15 we design programming for inmates to prepare them for
16 re-entry, we'll increase their success at recidivism
17 if we can deal with those criminogenic risk factors
18 and bring those risk factors down.

19 Q Are movies related to risk factors?

20 A They possibly are.

21 Q Is there literature reflecting that?

22 A I'm not aware of literature specifically

1 addressing the issue of movies and criminogenic risk
2 factors, but the messages that are in a variety of
3 media would be related to a number of these factors.

4 Q What kind of messages are you referring
5 to?

6 A Messages that are--I'll give you the
7 three most common, the biggest criminogenic risk
8 factors that are out there. The first is antisocial
9 pro-criminal belief system or value system, and
10 that's a system that glorifies criminal behavior,
11 drug use, violence.

12 Q Okay.

13 A The second major criminogenic risk factor
14 that we find with a lot of our inmates is that
15 they're only exposed to other people that are
16 criminals and that they don't have associates or role
17 models that are non-criminal.

18 Q Okay.

19 A And the last of what they call the big
20 three of these factor--and there's a number of these
21 criminogenic risk factors--are temperament or
22 personalty flaws, and a number of those are excessive

1 risk-taking, egocentric personalities where you
2 believe the world in essence revolves around you,
3 impulse control, psychopathy, and there's a number of
4 other ones.

5 So when we design programs, we try to
6 attack those risk factors and bring them down.

7 Q The first one you mentioned, the
8 antisocial pro-criminal value system, I think.

9 A Yes.

10 Q Is that something that was not understood
11 more than 10 years ago?

12 A No. These criminogenic risk factors
13 really didn't come into play in the literature until
14 the mid-nineties and really over the last probably
15 five to seven years with some of the work done at the
16 University of Cincinnati and so forth.

17 Q So they didn't exist at the time the
18 Zimmer Amendment was enacted?

19 A They would have been around--the earliest
20 article I recall, and there could be earlier ones,
21 dates back to about 1994.

22 Q Okay. So that's about 10 years ago?

1 A Um-hum.

2 Q And the second one was exposure to other
3 people who are not criminals?

4 A Correct.

5 Q In a sense, it's a way of saying that a
6 lot of the people in prisons are people who grew up
7 in an environment where there were lots of criminals
8 around?

9 A And other associates, their peers, will
10 have a criminal lifestyle, and so they don't in
11 essence have the feel for what a non-criminal
12 lifestyle would be like.

13 Q So showing a prisoner a movie about
14 somebody who is a noble figure who is not a criminal
15 and who has been--who has done some good things of a
16 non-criminal nature could be a positive thing for
17 such prisoners?

18 A That could be.

19 Q Or their reading books about such people?

20 A Yes.

21 Q Have you spoken with anybody other than
22 Dr. Baxter outside of the attorneys in order to

1 prepare for this deposition?

2 A No.

3 Q Okay. Have you read any transcripts of
4 any legal proceedings in order to prepare for this
5 deposition?

6 A No.

7 Q Have you been deposed in any lawsuits
8 involving the Zimmer Amendment?

9 A No.

10 Q Have you given any testimony in court in
11 any lawsuits involving the Zimmer Amendment?

12 A No.

13 Q Have you prepared any affidavits or
14 written declarations in any lawsuits involving the
15 Zimmer Amendment?

16 A No.

17 Q Same question with respect to the Ensign
18 Amendment, which this case doesn't concern. It's
19 different subject matter.

20 MS. EDNEY: I'm going to object as to
21 relevance.

22 You can answer.

1 BY MR. KRAKOFF:

2 Q You can answer?

3 A No.

4 Q Are you aware of any lawsuits involving
5 the Federal Bureau of Prisons other than the lawsuit
6 I'm here about today dealing with the Zimmer
7 Amendment within a prison context?

8 A No.

9 [Plaintiff's Exhibit No. 3 was.
10 identified for the record.]

11 BY MR. KRAKOFF:

12 Q Okay. I refer you to Exhibit 3, which is
13 a September 16, 1986 program statement and the
14 subject is inmate recreation programs. Have you seen
15 this document before today?

16 A Probably 20 years ago. Yeah. It looks
17 familiar.

18 Q Okay. I'd like you to turn to the
19 last--are you familiar, though, generically speaking
20 with the form known as Program Statement?

21 A Yes, absolutely.

22 Q I refer you to the last page of this

1 exhibit, which is page 4, and it has the name Norman
2 A. Carlson, Director, and apparently is his
3 signature, although I don't know that to be a fact.
4 Was Mr. Carlson the Director of the Federal Bureau of
5 Prisons in September of 1986?

6 A Yes.

7 [Plaintiff's Exhibit No. 4 was
8 identified for the record.]

9 BY MR. KRAKOFF:

10 Q And if you can turn briefly to Exhibit 4
11 just to give you another example, the last page of
12 that, you'll see that there is not a signature, but
13 you'll see the name Kathleen M. Hawk, Director, on
14 the last page, and I think if you go through each of
15 these program statements, you'll see on the last page
16 a typed name with the director's name on it.

17 What does that indicate when you see the
18 name of the director either typed or signed at the
19 end of a program statement? Does that mean
20 something?

21 A That means that it's a national policy.

22 Q Does that mean that this is a policy that

1 is being issued by the director?

2 A Yes.

3 Q And is the implication of that that the
4 director is approving that program, the substance of
5 the program statement?

6 A Yes.

7 Q Generically speaking, what is a program
8 statement?

9 A It's a policy directive.

10 Q And do some program statements, are some
11 of those issued on a regional basis as opposed to out
12 of the Washington, D.C. Headquarters, or do they all
13 emanate from Headquarters, to the best of your
14 knowledge?

15 A There's national policy, which are
16 program statements, and then some of the national
17 policies allow for institutions to issue local
18 interpretations of the policy. Those are called
19 institution supplements.

20 [Plaintiff's Exhibit No. 11 was
21 identified for the record.]

22 BY MR. KRAKOFF:

1 Q Let me refer you to Plaintiff's Exhibit
2 11, for example. That's an institution supplement
3 dated May 15, 1990, and the subject is inmate
4 recreation programs. This would be an example of
5 something that was issued by a particular institution
6 as opposed to originating or emanating from or being
7 issued by the central office?

8 A That's correct.

9 Q So by definition, if I see the heading
10 "Program Statement", that would normally indicate
11 that it's a national policy?

12 A That's correct.

13 Q And when there is a program statement, is
14 it expected that there will be an institution
15 supplement dealing with the program statement, or is
16 that something that occurs sometimes but not
17 inevitably?

18 A No. In fact. The number of institution
19 supplements would be very small compared to national
20 program statements.

21 Q And this particular program statement in
22 Plaintiff's Exhibit 3, the 1986 program statement, is

1 this something that would have affected every penal
2 institution within the Federal Bureau of Prisons
3 system?

4 A Yes.

5 Q And that would have included FCI McKean.
6 Correct?

7 A Correct.

8 Q And I note on this particular program
9 statement, Exhibit 3, it begins to explain--if you
10 see at the very bottom of the first page, it says
11 bracketed in bold, dash, rules. There appears to be
12 something under that which didn't come out on this
13 copy, but if you look at the first page of this
14 program statement, some of it is in bolder or darker
15 letters. Some of it is in normal typed letters, not
16 bold, and am I correct that the bold language that is
17 bracketed represents the rules and the unbracketed
18 non-bold letters is just an interpretation of the
19 rules or an explanation about how to implement the
20 rules?

21 A Yes. That would be fair.

22 Q Okay. Assuming that the director of the

1 Bureau of Prisons was not debilitated or that there
2 was not an opening and therefore somebody under the
3 director was operating the Bureau, was the director
4 the only person who could issue a program statement,
5 or could somebody of lesser rank issue a program
6 statement?

7 A Only the director.

8 Q Was that also true as of September 16,
9 1986, the date of Exhibit 3?

10 A Yes.

11 Q Has that been true as long as you can
12 recall?

13 A It has.

14 Q And when a program statement was issued,
15 I take it that it would be distributed to the
16 regional directors; is that right? I don't know if
17 they're called regional directors. What are they
18 called? The regional administrators?

19 A Regional directors.

20 Q Would they normally receive a copy?

21 A Yes.

22 Q And then the wardens within the

1 respective regions, it would be expected that they
2 would receive a copy of the program directive too; is
3 that correct?

4 A Yes.

5 Q And most of my work is within the state
6 prison system, so I'm asking you this because I
7 really don't know the answer. I'm assuming, and tell
8 me if I'm wrong, by using the nomenclature "regional
9 directors" that the Bureau of Prisons is divided into
10 various geographical regions?

11 A That's correct.

12 Q And which region would FCI McKean fall
13 within?

14 A Northeast region.

15 Q How many regions are there? Seven?

16 A There's currently six. There were five
17 in 1986.

18 Q Okay. And when the warden received a
19 program statement such as the inmate recreation
20 program statement of September 16, 1986, was he
21 expected--in fact, was he required to comply with the
22 program statement?

1 A Yes.

2 Q And were the personnel within a given
3 prison under the warden expected and, in fact,
4 required to comply with the program statement?

5 A Yes.

6 Q Now, this particular program statement,
7 would this have applied--let me ask you specifically
8 so we can narrow it down somewhat. If you look at
9 Item 4 on the first page, it gives--it lists a number
10 of leisure activities that inmates could participate
11 in when not performing assigned duties, and then they
12 list informal sports, physical fitness, table games,
13 and then eventually down to movies and stage shows.

14 With respect to movies, Item 7 on page 3,
15 I'll read that before putting a question to you. It
16 says movies and then it gives a section, 544.33.

17 "The warden or designee may approve the
18 showing of movies at the institution. X-rated movies
19 are not permitted. Where the institution receives
20 premium movie channels through cable television
21 subscription, regular movie rental ordinarily will be
22 limited to special events or holidays."

1 And then in the implementing information
2 section, it says: "This selection authority may not
3 be delegated below the level of supervisor of
4 education. Movies will be disapproved when the
5 warden determines that showing, slash, viewing them
6 would pose a threat to the security or good order of
7 the institution."

8 When the warden at FCI McKean received
9 this, and I'm just using him as the example, any of
10 the wardens, was he required to comply with this
11 provision?

12 A Yes.

13 Q And if, in fact, an X-rated movie to be
14 shown in the face of Item 7, he would, the warden
15 would, be violating Bureau of Prisons policy, would
16 he not?

17 A Yes, sir.

18 Q Now, with respect to inmates who are in
19 the general prison population, I assume that's a--is
20 that a term that is used in the federal system to
21 distinguish it from inmates who are in some sort of
22 administrative segregation or disciplinary--

1 A Yes. General population.

2 Q Would this program statement have applied
3 to inmates who were in the general population?

4 A Yes.

5 Q Okay. And by that, I mean it would have
6 routinely been applied to general population inmates
7 across the board. Correct?

8 A Yes.

9 Q Do you know whether the showing of movies
10 was available in 1986 to inmates who were in
11 segregated confinement?

12 A They wouldn't have--I can only speak to
13 my experience at Terminal Island.

14 Q Right.

15 A No. They would have no access to that.

16 Q Okay. I refer you to Plaintiff's Exhibit
17 4, which is not titled program statement. If you
18 read through this, does this appear to be a program
19 statement with the exception of the heading?

20 A Yes. The "P.S." at the beginning of the
21 top number means program statement.

22 MR. KRAKOFF: Okay. Before I ask another